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*Attorneys for Plaintiff Seth Doliboa
 individually and on behalf of all others similarly situated*

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

<p>SETH DOLIBOA, <i>individually and on behalf of all others similarly situated,</i></p> <p>Plaintiff,</p> <p>v.</p> <p>Allegiant Air, LLC,</p> <p>Defendant.</p>	<p>Case No: 2:17-cv-02779</p> <p>Class Action</p> <p>Class Action Complaint for Damages for Breach of Contract</p> <p>Jury Trial Demanded</p>
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SETH DOLIBOA (“Plaintiff”), by and through undersigned counsel, and brings this class action complaint individually and on behalf of all others similarly situated against Allegiant Air, LLC (“Defendant”) with regard to Defendant’s breaches of one or more contracts, alleging, upon personal knowledge as to

1 Plaintiff's individual actions and upon information and belief and/or counsel's
2 investigations as to all other matters, the following:

3 INTRODUCTION

4 1. Plaintiff brings this class action to seek compensatory damages,
5 restitution, specific performance, disgorgement of profits, costs of suit, attorneys'
6 fees, injunctive relief, and any other relief that this Court deems just and proper
7 arising from Defendant's breaches of contracts with Plaintiff and the Class
8 Members. It expressly is not intended to request any recovery for personal injury
9 and claims related thereto.

10 2. Allegiant Travel Company, the parent corporation of Allegiant Air,
11 LLC claims that Allegiant Air, LLC is a "low-cost passenger airline."

12 3. Defendant claims its mission is "to provide high-value, low-cost travel
13 experiences to our customers."¹

14 4. Plaintiff brings this case as a class action to challenge Defendant's
15 multiple breaches of contracts.

16 5. Unless otherwise indicated, the use of Defendant's name in this
17 Complaint includes all agents, employees, officers, members, directors, heirs,
18 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
19 insurers of Defendant named.

20 PARTIES

21 6. Plaintiff Seth Doliboa is a natural person who is a citizen of the state
22 of Ohio.

23 7. Defendant Allegiant Air, LLC is a limited liability company whose
24 sole member is Allegiant Travel Company. Allegiant Travel Company is a Nevada
25 corporation with a principal place of business at 1201 North Town Center Drive in
26 Las Vegas, Nevada. Allegiant Travel Company is, therefore, a citizen of the state
27

28 ¹ <https://www.allegiantair.com/allegiants-values-mission-statement> (last visited 10/16/2017)

1 of Nevada. Since a limited liability company is deemed a citizen of the state of
 2 each of its members, Allegiant Air, LLC is a citizen of the state of Nevada.

3 JURISDICTION AND VENUE

4 8. This Court has subject matter jurisdiction over this class action
 5 pursuant to 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005
 6 because:

- 7 a. the number of members of the proposed plaintiff class is greater than
 8 100;
- 9 b. at least one member of each plaintiff class is a citizen of a State
 10 different from any Defendant;
- 11 c. the amount in controversy, aggregated among all individual class
 12 members, plus statutory damages and attorney's fees, exceeds \$5
 13 million.

14 9. Venue is proper in the United States District Court for the District of
 15 Nevada pursuant to 28 U.S.C. § 1391 because:

- 16 a. a substantial part of the events or omissions giving rise to the claim
 17 occurred; and/or
- 18 b. Defendant resides in this District.

19 FACTUAL ALLEGATIONS

20 10. Plaintiff and the Members of the Classes each booked flights with
 21 Allegiant Air, LLC online or over the telephone.

22 11. By booking flights with Allegiant Air, LLC online or over the
 23 telephone, Plaintiff and the Members of the Classes each entered into the following,
 24 or substantially similar, agreements with Defendant: (a) Contract of Carriage (*See*,
 25 *e.g.*, Exhibit A); (b) Terms & Conditions (*See, e.g.*, Exhibit B), and (c) Customer
 26 Service Plan (*See, e.g.*, Exhibit C).
 27
 28

12. Defendant breached of the express terms of these agreements, as indicated more fully below, by charging Plaintiff and Members of the Classes an Electronic Carrier Usage Fee for \$13.00 per segment, per person which in no way relates to the actual cost to book the fee online or over the telephone.²

CONTRACT OF CARRIAGE

13. Allegiant's Contract of Carriage, provides, in pertinent part:

125. Compliance with Law and Governmental Regulations

All transportation is sold and all carriage is performed subject to compliance with **all** applicable laws and governmental regulations, **including those of the U.S. Department of Transportation** and the Federal Aviation Administration, **many of which are not specified herein but are nonetheless binding on Carrier and all passengers.**" (emphasis added)

14. Defendant breached the express terms of the Contract of Carriage by failing to comply with all applicable laws and governmental regulations, including those of the U.S. Department of Transportation and the Federal Aviation Administration, many of which are not specified [in the Contract of Carriage] but are nonetheless binding on Carrier and all passengers.

15. In particular, U.S. Department of Transportation provides in its February 21, 2012 Notice regarding "Additional Guidance on Airfare/Air Tour Price Advertisements,"³ which provides "additional guidance to airlines and ticket agents that market prices for air transportation [...] regarding the full fare advertising rule."

16. The Notice describes several airline and ticket agent practices that the Office of Aviation Enforcement and Proceedings (Enforcement Office) considers to

² In fact, Defendant charges an additional \$14.00 to Class Members who book over the telephone.

³ Additional Guidance on Airfare / Air Tour Price Advertisements, Available at: https://www.dot.gov/sites/dot.gov/files/docs/Notice.Taxes_fees_sam_dl_13.website_0.pdf (Last visited: 8/3/2017)

1 violate section 399.84 and/or to be unfair and deceptive and/or an unfair method of
2 competition in violation of 49 U.S.C. 41712.”

3 17. In pertinent part, the DOT, in its February 21, 2012 Notice, states with
4 respect to “Separate Listing of Taxes and Carrier Fees”:

5 “If a vendor chooses to make available information regarding the amount of
6 taxes and/or fees that are included in the full fare, the disclosure must
7 accurately distinguish between taxes and government fees on the one hand
8 and carrier imposed fees on the other. In addition, with respect to information
9 about carrier imposed fees included in the full fare, such disclosure must
10 *accurately represent the actual cost of the item for which the charge is
assessed and must not otherwise be deceptive.*”

Id. (emphasis added).

11 18. Defendant charges an exorbitant rate of \$13.00 per passenger, per
12 segment, which is not the actual cost of the item for which the charge is addressed
13 and is otherwise deceptive.

14 19. The cost to book online is negligible and to the extent there is an actual
15 cost, that significantly less than the \$13.00 *per segment*⁴, *per passenger* Defendant
16 charges and, as a result, Defendant has not accurately represented the actual cost of
17 the item for which the charge is assessed and is otherwise deceptive and has
18 violated the terms of the Terms & Conditions.

19 TERMS & CONDITIONS AGREEMENT

20 20. The *Terms and Conditions*, states in pertinent part:

21 “Please review U.S. Department of Transportation Consumer Notices
22 **regarding your rights at <http://www.dot.gov/airconsumer>,**
23 **Allegiant’s baggage limitations of liability, and Allegiant’s**
Contract of Carriage.” (emphasis added.)

24 21. Notably, [https://www.dot.gov/airconsumer/guidance-aviation-rules-](https://www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes)
25 [and-statutes](https://www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes) provides a link to the February 21, 2012 Guidance On Aviation Rules
26 and Statutes entitled Additional Guidance on Airfare / Air Tour Price
27

28 ⁴ Allegiant defines a “segment” as “one take-off and one landing.” See Optional Services & Fees, Available at:
<https://www.allegiantair.com/popup/optional-services-fees>.

1 Advertisements. Clicking the link takes one to
 2 [https://www.dot.gov/individuals/aviation-consumer-protection/additional-guidance-](https://www.dot.gov/individuals/aviation-consumer-protection/additional-guidance-airfare-andair-tour-price)
 3 [airfare-andair-tour-price](https://www.dot.gov/individuals/aviation-consumer-protection/additional-guidance-airfare-andair-tour-price), which includes a link to a PDF of the February 21, 2012
 4 Notice, which is also the link identified in Footnote 2 *infra*.

5 22. In particular, the U.S. Department of Transportation provides in its
 6 February 21, 2012 Notice regarding “Additional Guidance on Airfare/Air Tour
 7 Price Advertisements,”⁵ which provides “additional guidance to airlines and ticket
 8 agents that market prices for air transportation [...] regarding the full fare
 9 advertising rule.”

10 23. The Notice describes several airline and ticket agent practices that the
 11 Office of Aviation Enforcement and Proceedings (Enforcement Office) considers to
 12 violate section 399.84 and/or to be unfair and deceptive and/or an unfair method of
 13 competition in violation of 49 U.S.C. 41712.”

14 24. In pertinent part, the DOT, in its February 21, 2012 Notice, states with
 15 respect to “Separate Listing of Taxes and Carrier Fees”:

16 “If a vendor chooses to make available information regarding the amount of
 17 taxes and/or fees that are included in the full fare, the disclosure must
 18 accurately distinguish between taxes and government fees on the one hand
 19 and carrier imposed fees on the other. In addition, with respect to information
 20 about carrier imposed fees included in the full fare, such disclosure must
 21 *accurately represent the actual cost of the item for which the charge is*
 22 *assessed and must not otherwise be deceptive.”*

21 *Id.* (emphasis added).

22 25. Defendant charges an exorbitant rate of \$13.00 per passenger, per
 23 segment, which is not the actual cost of the item for which the charge is addressed
 24 and is otherwise deceptive.

25 26. The cost to book online is negligible and to the extent there is an actual
 26

27 ⁵ Additional Guidance on Airfare / Air Tour Price Advertisements, Available at:
 28 https://www.dot.gov/sites/dot.gov/files/docs/Notice.Taxes_fees_sam_dl_13.website_0.pdf
 (Last visited: 8/3/2017)

1 cost, that significantly less than the \$13.00 *per segment*⁶, *per passenger* Defendant
 2 charges and, as a result, Defendant has not accurately represented the actual cost of
 3 the item for which the charge is assessed and is otherwise deceptive and has
 4 violated the terms of the Terms & Conditions.

5 27. For these reasons, the rights of Plaintiff and the Classes as bestowed
 6 by Defendant in the Terms & Conditions were violated and Defendant's acts and
 7 failures to act have, therefore, violated the specific terms of the Terms &
 8 Conditions with its customers.

9 CUSTOMER SERVICE PLAN AGREEMENT

10 28. In the Customer Service Plan, which Defendant states, in pertinent
 11 part, that it became "[e]ffective on and after September 22, 2015."

12 29. In the Customer Service Plan, Defendant defines that "Allegiant" or
 13 "Carrier" means "Allegiant Air, LLC", and "Passenger" or Customer" means "any
 14 person, except members of the crew, carried or to be carried in an aircraft with the
 15 consent of Carrier."

16 30. Plaintiff and the Class Members are a "person carried or to be carried
 17 in an aircraft with the consent of the Carrier."

18 31. Plaintiff and the Class Members are not "members of the crew."

19 32. In the Customer Service Plan, Allegiant promises to customers that
 20 "Allegiant offers the lowest fare available at the time and place of booking, whether
 21 customers make reservations online at www.allegiantair.com, by calling the
 22 Allegiant Reservations Center at 702-505-8888, or at the airport during ticketing
 23 hours."

24 33. According to the Oxford Dictionary, "whether" means "indicating that
 25 a statement applies whichever of the alternatives mentioned is the case."

26 34. However, Allegiant never offers the lowest fare available when it
 27

28 ⁶ Allegiant defines a "segment" as "one take-off and one landing." See Optional Services & Fees, Available at:
<https://www.allegiantair.com/popup/optional-services-fees>.

1 books Plaintiff and the Class Members book online or through the telephone
2 because Allegiant's fares were always lowest at the airport during ticketing hours.

3 35. In fact, fares are always \$13.00 per segment per person more
4 expensive for flights booked online or by calling the Allegiant Reservations Center.
5 For a round trip flight, that is \$26.00 per person higher.

6 36. As described throughout the Complaint, Defendant acts and failures to
7 act have violated the specific terms of the Customer Service Plan with its
8 customers.

9 37. Defendant is liable for the losses of Plaintiff and the Classes that have
10 resulted from Defendant's breaches of the parties' contractual agreement.

11 38. For example, Defendant breached the express terms of the Customer
12 Service Plan by not offering the lowest fare available at the time and place of
13 booking, whether customers make reservations online at www.allegiantair.com, by
14 calling the Allegiant Reservations Center at 702-505-8888, or at the airport during
15 ticketing hours.

16 39. In particular Defendant breached the express terms of the Customer
17 Service Plan because at any given time, fares at the airport during ticketing hours
18 are always \$13.00 less than the fares online at www.allegiantair.com or by calling
19 the Allegiant Reservations Center at 702-505-8888. See e.g., Optional Services &
20 Fees, Available at: <https://www.allegiantair.com/popup/optional-services-fees> (Last
21 visited: 8/2/2017) ("Fares displayed are inclusive of an electronic usage charge of
22 \$13 per passenger, per segment, applicable to all airline reservations booked
23 through the Web site or call center. \$13.00").

24 CLASS ACTION ALLEGATIONS

25 40. Plaintiff brings this action on behalf of himself and on behalf of all
26 others similarly situated (the "Classes").

27 41. Plaintiff represents, and is a member of the Classes, consisting of:
28

Class One:

All persons or entities who booked a flight with Allegiant Air, LLC online or over the telephone.

Class Two:

All persons or entities from Ohio who booked a flight with Allegiant Air, LLC online or other the telephone.

42. Excluded from the Classes are: (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or Defendant's respective parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) Any governmental entities and any instrumentalities, subdivisions, agencies thereof; (4) any person who executes and files a timely request for exclusion from the Class; (5) any person who has had their claims in this matter finally adjudicated and/or otherwise released; (6) the legal representatives, successors and assigns of any such excluded person; (7) Counsel of record.

43. Class One and Class Two are collectively referred to as the "Classes."

44. Plaintiff reserves the right to modify or amend the definition of the proposed Classes before the Court determines whether certification is appropriate.

45. **Numerosity. Fed. R. Civ. P. 23(a)(1).** While Plaintiff does not know the exact number of class members, Plaintiff believes there are (at least) thousands of members in each Class. Undoubtedly, individual joinder in this case is

1 impracticable. More than one thousand class members is sufficient to satisfy
 2 numerosity under Fed. R. Civ. P. 23(a)(1). Class Members can be easily identified
 3 through Defendant's records data base.
 4

5 **46. Commonality and Predominance. Fed. R. Civ. P. 23(a)(2) and**
 6 **(b)(3).** There are several questions of law and fact common to the claims of
 7 Plaintiff and Members of the Classes. All of the Members of the Classes' claims are
 8 based upon the same facts and circumstances. Fed. R. Civ. P. 23(a)(3). The
 9 questions of law and fact common to the members of the Classes predominate over
 10 any questions affecting only individual Members of the Classes. The resolution of
 11 common questions in this case will resolve the claims of both Plaintiff and the
 12 Classes. Common questions include, but are not limited to, the following:
 13
 14

- 15 a. Whether the Contract of Carriage contains express terms voluntarily
 16 undertaken by the parties; *See, e.g.*, Exhibit A.
- 17 b. Whether Defendant breached the express terms of the Contract of
 18 Carriage.
- 19 c. Whether the Terms & Conditions contains express terms voluntarily
 20 undertaken by the parties. *See, e.g.*, Exhibit B;
- 21 d. Whether Defendant breached the express terms of the Terms &
 22 Conditions.
- 23 e. Whether the Customer Service Plan contains express terms voluntarily
 24 undertaken by the parties; *See, e.g.*, Exhibit C; and/or
- 25 f. Whether Defendant breached such terms of Customer Service Plan.
- 26 g. Whether Defendant was obligated to put in the Customer Service Plan
 27 that "Allegiant offers the lowest fare available at the time and place of
 28

1 booking, whether customers make reservations online
2 at www.allegiantair.com, by calling the Allegiant Reservations Center
3 at 702-505-8888, or at the airport during ticketing hours.”

4 h. Whether Defendant voluntarily undertook to comply with “all”
5 applicable laws and governmental regulations, “including those of the
6 U.S. Department of Transportation and the Federal Aviation
7 Administration, many of which are not specified herein but are
8 nonetheless binding on Carrier and all passengers.”

9 i. Whether Defendant complied with “all” applicable laws and
10 governmental regulations, “including those of the U.S. Department of
11 Transportation and the Federal Aviation Administration, many of
12 which are not specified herein but are nonetheless binding on Carrier
13 and all passengers;”

14 j. Whether Defendant breached the voluntary terms undertaken by
15 Defendant in the Terms & Conditions by not accurately representing the
16 actual cost of the electronic carrier usage fee and/or by being otherwise
17 deceptive with respect to the electronic carrier usage fee in violation of
18 14 C.F.R. 399.84 and the February 21, 2012 Notice.

19 k. Whether Defendant breached the voluntary terms undertaken by
20 Defendant in the Customer Service Plan by not accurately representing
21 the actual cost of the electronic carrier usage fee and/or by being
22 otherwise deceptive with respect to the electronic carrier usage fee in
23 violation of 14 C.F.R. 399.84 and the February 21, 2012 Notice.

24 l. Whether Plaintiff and the Classes are entitled to compensatory
25 damages;

26 m. Whether Plaintiff and the Classes are entitled to restitution;

27 n. Whether Plaintiff and the Classes are entitled to specific performance;

28 o. Whether Plaintiff and the Classes are entitled to disgorgement of
profits;

p. Whether Plaintiff and the Classes are entitled to costs of suit;

q. Whether Plaintiff and the Classes are entitled to attorneys’ fees;

1 r. Whether Plaintiff and the Classes are entitled to injunctive relief;
2 and/or

3 s. Whether Plaintiff and the Classes are entitled to any other relief.
4

5 47. **Typicality. Fed. R. Civ. P. 23(a)(3).** The claims of Plaintiff are
6 typical of the claims of the respective Classes. The claims of the Plaintiff and the
7 respective Classes are based on the same legal theories and arise from the same
8 unlawful and willful conduct, resulting in the same injury to the Plaintiff and the
9 respective Classes. Plaintiff and all members of the Classes are similarly affected
10 by Defendant's wrongful conduct and were damaged in the same way.

11 48. **Adequacy. Fed. R. Civ. P. 23(a)(4).** Plaintiff is an adequate
12 representative of the Classes because Plaintiff's claims arise out of the same
13 common course of conduct giving rise to the claims of the other members of the
14 Classes. Plaintiff falls within each class definition and Plaintiff's interests do not
15 conflict with the interests of the Members of the Classes Plaintiff seeks to represent.
16 Plaintiff is passionate about this litigation personally and will prosecute this action
17 vigorously for the benefit of the Members of the Classes. Plaintiff is represented by
18 experienced and able attorneys from coordinated law firms. Plaintiff is represented
19 by counsel who are competent and experienced in the prosecution of class action
20 litigation, and Plaintiff's counsel intends to prosecute this action vigorously for the
21 benefit of the Members of the Classes. Plaintiff and class counsel can fairly and
22 adequately protect the interests of all of the Members of the Classes. Neither
23 Plaintiff nor their counsel have any interest adverse to those of the other Members
24 of the Classes.

25 49. **Superiority. Fed. R. Civ. P. 23(b)(3):** Class action treatment is a
26 superior method for the fair and efficient adjudication of the controversy, in that,
27 among other things, such treatment will permit a large number of similarly situated
28 persons to prosecute their common claims in a single forum simultaneously,

1 efficiently, and without the unnecessary duplication of evidence, effort and expense
2 that numerous individual actions would engender. The benefits of proceeding
3 through the class mechanism, including providing injured persons or entities with a
4 method for obtaining redress for claims that it might not be practicable to pursue
5 individually, substantially outweigh any difficulties that may arise in management
6 of this class action.

7 50. The litigation without the classes would allow litigation claims that, in
8 view of the expense of the litigation, may be insufficient in amount to support
9 separate actions. Individual litigation of each Member of the Classes' claims would
10 be impracticable and individual litigation would be unduly burdensome to the
11 courts. Without the class action vehicle, the Classes would have no reasonable
12 remedy and would continue to suffer losses, as Defendant continues to engage in
13 the bad faith, unlawful, unfair, and deceptive conduct that is the subject of this
14 Complaint, and Defendant would be permitted to retain the proceeds of its
15 violations of law. Absent a class action, most of the respective Members of the
16 Classes would find the cost of litigating their claims to be prohibitive, and will have
17 no effective remedy. The class treatment of common questions of law and fact is
18 also superior to multiple individual actions or piecemeal litigation in that it
19 conserves the resources of the courts and the litigants, and promotes consistency
20 and efficiency of adjudication.

21 51. **Injunctive and Declaratory Relief is Appropriate. Fed. R. Civ. P.**
22 **23(b)(1).** The prosecution of separate actions by individual members of the classes
23 would create a risk of:

24 a. Inconsistent or varying adjudications with respect to individual
25 members of the respective classes which would establish incompatible standards of
26 conduct for the Defendant; and

27
28 b. Adjudications with respect to individual members of the respective

1 classes which would, as a practical matter, be dispositive of the interests of the
2 other members not parties to the adjudications or substantially impair or impede
3 their ability to protect their interests.
4

5 **52. Policies Generally Applicable to the Classes. Fed. R. Civ. P.**
6 **23(b)(2).** Defendant has acted or refused to act on grounds generally applicable to
7 the classes, thereby requiring the Court's imposition of uniform relief to ensure
8 compatible standards of conduct toward the members of the Classes, and making
9 final injunctive relief appropriate with respect to each of the Classes as a whole.
10 Defendant's practices challenged herein apply to and affect the members of the
11 Classes uniformly, and Plaintiff's challenge of those practices hinge on Defendant's
12 conduct with respect to the Classes as a whole, not on facts or law applicable only
13 to Plaintiff.
14
15
16

17 **53. Certification of Particular Issues. Fed. R. Civ. P. 23(c)(4).** Issue
18 certification is also appropriate because the following particular issues (among
19 others) exist that may be brought or maintained as a class action:
20

- 21 a. Whether the Contract of Carriage contains express terms voluntarily
22 undertaken by the parties; *See, e.g.*, Exhibit A.
- 23 b. Whether Defendant breached the express terms of the Contract of
24 Carriage.
- 25 c. Whether the Terms & Conditions contains express terms voluntarily
26 undertaken by the parties. *See, e.g.*, Exhibit B;
- 27 d. Whether Defendant breached the express terms of the Terms &
28 Conditions.

- e. Whether the Customer Service Plan contains express terms voluntarily undertaken by the parties; *See, e.g.*, Exhibit C; and/or
- f. Whether Defendant breached such terms of Customer Service Plan.
- g. Whether Defendant was obligated to put in the Customer Service Plan that “Allegiant offers the lowest fare available at the time and place of booking, whether customers make reservations online at www.allegiantair.com, by calling the Allegiant Reservations Center at 702-505-8888, or at the airport during ticketing hours.”
- h. Whether Defendant voluntarily undertook to comply with “all” applicable laws and governmental regulations, “including those of the U.S. Department of Transportation and the Federal Aviation Administration, many of which are not specified herein but are nonetheless binding on Carrier and all passengers.”
- i. Whether Defendant complied with “all” applicable laws and governmental regulations, “including those of the U.S. Department of Transportation and the Federal Aviation Administration, many of which are not specified herein but are nonetheless binding on Carrier and all passengers;”
- j. Whether Defendant breached the voluntary terms undertaken by Defendant in the Terms & Conditions by not accurately representing the actual cost of the electronic carrier usage fee and/or by being otherwise deceptive with respect to the electronic carrier usage fee in violation of 14 C.F.R. 399.84 and the February 21, 2012 Notice.
- k. Whether Defendant breached the voluntary terms undertaken by Defendant in the Customer Service Plan by not accurately representing the actual cost of the electronic carrier usage fee and/or by being otherwise deceptive with respect to the electronic carrier usage fee in violation of 14 C.F.R. 399.84 and the February 21, 2012 Notice.
- l. Whether Plaintiff and the Classes are entitled to compensatory damages;

- 1 m. Whether Plaintiff and the Classes are entitled to restitution;
- 2
- 3 n. Whether Plaintiff and the Classes are entitled to specific performance;
- 4
- 5 o. Whether Plaintiff and the Classes are entitled to disgorgement of
- 6 profits;
- 7
- 8 p. Whether Plaintiff and the Classes are entitled to costs of suit;
- 9
- 10 q. Whether Plaintiff and the Classes are entitled to attorneys' fees;
- 11
- 12 r. Whether Plaintiff and the Classes are entitled to injunctive relief;
- 13 and/or
- 14
- 15 s. Whether Plaintiff and the Classes are entitled to any other relief.

16 FIRST CAUSE OF ACTION

17 BREACH OF THE CONTRACT OF CARRIAGE AGREEMENT

18 Plaintiff repeats, realleges, and incorporates by reference the above
19 allegations of this Complaint as if fully set forth herein.

20 54. Plaintiff and Defendant have entered into a contractual agreement
21 called a Contract of Carriage. See, e.g., Exhibit A.

22 55. The Contract of Carriage provides, in pertinent part:

23 125. Compliance with Law and Governmental Regulations

24 All transportation is sold and all carriage is performed subject to
25 compliance with **all** applicable laws and governmental regulations,
26 **including those of the U.S. Department of Transportation** and the
27 Federal Aviation Administration, **many of which are not specified**
28 **herein but are nonetheless binding on Carrier and all passengers."**

(emphasis added).

56. Defendant breached the express terms of the Contract of Carriage by

1 failing to comply with all applicable laws and governmental regulations, including
 2 those of the U.S. Department of Transportation and the Federal Aviation
 3 Administration, many of which are not specified [in the Contract of Carriage] but
 4 are nonetheless binding on Carrier and all passengers.

5 57. In particular, U.S. Department of Transportation provides in its
 6 February 21, 2012 Notice regarding “Additional Guidance on Airfare/Air Tour
 7 Price Advertisements,”⁷ which provides “additional guidance to airlines and ticket
 8 agents that market prices for air transportation [...] regarding the full fare
 9 advertising rule.”

10 58. The Notice describes several airline and ticket agent practices that the
 11 Office of Aviation Enforcement and Proceedings (Enforcement Office) considers to
 12 violate section 399.84 and/or to be unfair and deceptive and/or an unfair method of
 13 competition in violation of 49 U.S.C. 41712.”

14 59. In pertinent part, the DOT, in its February 21, 2012 Notice, states with
 15 respect to “Separate Listing of Taxes and Carrier Fees”:

16 “If a vendor chooses to make available information regarding the amount of
 17 taxes and/or fees that are included in the full fare, the disclosure must
 18 accurately distinguish between taxes and government fees on the one hand
 19 and carrier imposed fees on the other. In addition, with respect to information
 20 about carrier imposed fees included in the full fare, such disclosure must
 21 *accurately represent the actual cost of the item for which the charge is*
 22 *assessed and must not otherwise be deceptive.”*

23 *Id.* (emphasis added).

24 60. Defendant charges an exorbitant rate of \$13.00 per passenger, per
 25 segment, which is not the actual cost of the item for which the charge is addressed
 26 and is otherwise deceptive.

27 61. The cost to book online is negligible and to the extent there is an actual

28 ⁷ Additional Guidance on Airfare / Air Tour Price Advertisements, Available at:
https://www.dot.gov/sites/dot.gov/files/docs/Notice.Taxes_fees.sam_dl.13.website_0.pdf
 (Last visited: 8/3/2017)

1 cost, that significantly less than the \$13.00 *per segment*⁸, *per passenger* Defendant
 2 charges and, as a result, Defendant has not accurately represented the actual cost of
 3 the item for which the charge is assessed and is otherwise deceptive and has
 4 violated the terms of the Terms & Conditions.

5 62. Defendant acts and failures to act have violated the specific express
 6 terms of the Contract of Carriage with its customers.

7 63. Defendant is liable for the losses of Plaintiff and the Classes that have
 8 resulted from Defendant's breaches of the parties' contractual agreement.

9 64. Plaintiff and the Classes have performed all, or substantially all, of the
 10 obligations imposed on them under the Contracts of Carriage.

11 65. Plaintiff and members of the Classes have sustained damages as a
 12 result of Defendant's breaches of the Contracts of Carriage and/or as a result of
 13 Defendant's breaches of the Contracts of Carriage.

14 SECOND CAUSE OF ACTION

15 BREACH OF THE TERMS & CONDITIONS AGREEMENT

16 Plaintiff repeats, realleges, and incorporates by reference the above
 17 allegations of this Complaint as if fully set forth herein.

18 66. Plaintiff and Defendant have entered into a contractual agreement
 19 called Terms & Conditions. See, e.g., Exhibit B.

20 67. The *Terms and Conditions*, states in pertinent part:

21 "Please review U.S. Department of Transportation Consumer Notices
 22 **regarding your rights at <http://www.dot.gov/airconsumer>,**
 23 **Allegiant's baggage limitations of liability, and Allegiant's**
 24 **Contract of Carriage."** (emphasis added.)

25 68. Notably, [https://www.dot.gov/airconsumer/guidance-aviation-rules-](https://www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes)
 26 [and-statutes](https://www.dot.gov/airconsumer/guidance-aviation-rules-and-statutes) provides a link to the February 21, 2012 Guidance On Aviation Rules

27
 28 ⁸ Allegiant defines a "segment" as "one take-off and one landing." See Optional Services & Fees, Available at:
<https://www.allegiantair.com/popup/optional-services-fees>.

1 and Statutes entitled Additional Guidance on Airfare / Air Tour Price
 2 Advertisements. Clicking the link takes one to
 3 [https://www.dot.gov/individuals/aviation-consumer-protection/additional-guidance-](https://www.dot.gov/individuals/aviation-consumer-protection/additional-guidance-airfare-andair-tour-price)
 4 [airfare-andair-tour-price](https://www.dot.gov/individuals/aviation-consumer-protection/additional-guidance-airfare-andair-tour-price), which includes a link to a PDF of the February 21, 2012
 5 Notice, which is also the link identified in Footnote 2 *infra*.

6 69. In particular, the U.S. Department of Transportation provides in its
 7 February 21, 2012 Notice regarding “Additional Guidance on Airfare/Air Tour
 8 Price Advertisements,”⁹ which provides “additional guidance to airlines and ticket
 9 agents that market prices for air transportation [...] regarding the full fare
 10 advertising rule.”

11 70. The Notice describes several airline and ticket agent practices that the
 12 Office of Aviation Enforcement and Proceedings (Enforcement Office) considers to
 13 violate section 399.84 and/or to be unfair and deceptive and/or an unfair method of
 14 competition in violation of 49 U.S.C. 41712.”

15 71. In pertinent part, the DOT, in its February 21, 2012 Notice, states with
 16 respect to “Separate Listing of Taxes and Carrier Fees”:

17 “If a vendor chooses to make available information regarding the amount of
 18 taxes and/or fees that are included in the full fare, the disclosure must
 19 accurately distinguish between taxes and government fees on the one hand
 20 and carrier imposed fees on the other. In addition, with respect to information
 21 about carrier imposed fees included in the full fare, such disclosure must
 22 *accurately represent the actual cost of the item for which the charge is*
 23 *assessed and must not otherwise be deceptive.”*

24 *Id.* (emphasis added).

25 72. Defendant charges an exorbitant rate of \$13.00 per passenger, per
 26 segment, which is not the actual cost of the item for which the charge is addressed
 27 and is otherwise deceptive.

28 73. The cost to book online is negligible and to the extent there is an actual

⁹ Additional Guidance on Airfare / Air Tour Price Advertisements, Available at:
https://www.dot.gov/sites/dot.gov/files/docs/Notice.Taxes_fees_sam_dl_13.website_0.pdf
 (Last visited: 8/3/2017)

1 cost, that significantly less than the \$13.00 *per segment*¹⁰, *per passenger* Defendant
 2 charges and, as a result, Defendant has not accurately represented the actual cost of
 3 the item for which the charge is assessed and is otherwise deceptive and has
 4 violated the terms of the Terms & Conditions.

5 74. For these reasons, the rights of Plaintiff and the Classes as bestowed
 6 by Defendant in the Terms & Conditions were violated and Defendant's acts and
 7 failures to act have, therefore, violated the specific terms of the Terms &
 8 Conditions with its customers.

9 75. Defendant is liable for the losses of Plaintiff and the Classes that have
 10 resulted from Defendant's breaches of the parties' contractual agreement.

11 76. Plaintiff and the Classes have performed all, or substantially all, of the
 12 obligations imposed on them under the Terms & Conditions.

13 77. Plaintiff and members of the Classes have sustained damages as a
 14 result of Defendant's breaches of the Terms & Conditions and/or as a result of
 15 Defendant's breaches of the Terms & Conditions.

16 **THIRD CAUSE OF ACTION**

17 **BREACH OF THE CUSTOMER SERVICE PLAN AGREEMENT**

18 Plaintiff repeats, realleges, and incorporates by reference the above
 19 allegations of this Complaint as if fully set forth herein.

20 78. Plaintiff and Defendant have entered into a contractual agreement
 21 called the Customer Service Plan. See, e.g., Exhibit C.

22 79. In the Customer Service Plan, Defendant states, in pertinent part, that
 23 it became "[e]ffective on and after September 22, 2015."

24 80. In the Customer Service Plan, Defendant defines that "Allegiant" or
 25 "Carrier" means "Allegiant Air, LLC", and "Passenger" or Customer" means "any
 26 person, except members of the crew, carried or to be carried in an aircraft with the
 27

28 ¹⁰ Allegiant defines a "segment" as "one take-off and one landing." See Optional Services & Fees, Available at:
<https://www.allegiantair.com/popup/optional-services-fees>.

1 consent of Carrier.”

2 81. Plaintiff and the Class Members are a “person carried or to be carried
3 in an aircraft with the consent of the Carrier.”

4 82. Plaintiff and the Class Members are not “members of the crew.”

5 83. Allegiant promises to customers that “Allegiant offers the lowest fare
6 available at the time and place of booking, whether customers make reservations
7 online at www.allegiantair.com, by calling the Allegiant Reservations Center at
8 702-505-8888, or at the airport during ticketing hours.”

9 84. According to the Oxford Dictionary, “whether” means “indicating that
10 a statement applies whichever of the alternatives mentioned is the case.”

11 85. However, Allegiant never offers the lowest fare available when it
12 books Plaintiff and the Class Members book online or through the telephone
13 because Allegiant’s fares were always lowest at the airport during ticketing hours.

14 86. In fact, fares are always \$13.00 per segment per person more
15 expensive for flights booked online or by calling the Allegiant Reservations Center.
16 For a round trip flight, that is \$26.00 per person higher.

17 87. As described throughout the Complaint, Defendant acts and failures to
18 act have violated the specific terms of the Customer Service Plan with its
19 customers.

20 88. Defendant is liable for the losses of Plaintiff and the Classes that have
21 resulted from Defendant’s breaches of the parties’ contractual agreement.

22 89. For example, Defendant breached the express terms of the Customer
23 Service Plan by not offering the lowest fare available at the time and place of
24 booking, whether customers make reservations online at www.allegiantair.com, by
25 calling the Allegiant Reservations Center at 702-505-8888, or at the airport during
26 ticketing hours.

27 90. In particular Defendant breached the express terms of the Customer
28 Service Plan because at any given time, fares at the airport during ticketing hours

1 are always \$13.00 less than the fares online at www.allegiantair.com or by calling
2 the Allegiant Reservations Center at 702-505-8888. See e.g., Optional Services &
3 Fees, Available at: <https://www.allegiantair.com/popup/optional-services-fees> (Last
4 visited: 8/2/2017) (“Fares displayed are inclusive of an electronic usage charge of
5 \$13 per passenger, per segment, applicable to all airline reservations booked
6 through the Web site or call center. \$13.00”).

7 91. Plaintiff and the Classes have performed all, or substantially all, of the
8 obligations imposed on them under the Customer Service Plan.

9 92. Plaintiff and members of the Classes have sustained damages as a
10 result of Defendant’s breaches of the Customer Service Plan and/or as a result of
11 Defendant’s breaches of the Customer Service Plan.

12 **PRAYER FOR RELIEF**

13 Plaintiff respectfully requests that the Court grant Plaintiff and Classes the
14 following relief against Defendant:

15 A. That the Court certify this case as a class action pursuant to Fed. R.
16 Civ. P. 23(a) and (b)(2) and (b)(3), and/or (c)(4) and, pursuant to Fed. R. Civ. P.
17 23(g), appoint the named Consumer Plaintiffs to be Class representatives and their
18 undersigned counsel to be Class counsel;

19 B. That the Court award Consumer Plaintiffs and the Class appropriate
20 relief, including compensatory damages, restitution, specific performance, and
21 disgorgement of profits;

22 C. An order requiring Defendant, at its own cost, to notify all members of
23 the Classes of the unlawful acts discussed herein;

24 D. That the Court award reasonable attorneys’ fees, costs, and expenses
25 as allowable by law;

26 E. That the Court award Consumer Plaintiffs and the Class pre-judgment
27 and post-judgment interest;

28 F. That the Court award appropriate injunctive relief; and/or

G. That the Court award any other relief to Plaintiff and the Classes that may be otherwise just and proper.

TRIAL BY JURY

93. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

DATED this 2nd day of November 2017.

Respectfully submitted,

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